IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 5TH JUNE 2007 / 15TH JYAISHTA 1929

WP(C).No. 29887 of 2005(G)

AGAINST THE ORDER IN EP 129 2002 IN
OS.681/1999 of MUNSIFF COURT,MUVATTUPUZHA

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PETITIONER:

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1. P.V. ARUN KUMAR, S/O. VISWAMBARAN,
PULICKAL HOUSE, VELLOORKUNNAM VILLAGE, -DO- KARA,
MUVATTUPUZHA.

2. P.R. SRIKANTH, S/O. RAMAKRISHNAN,
ASWATHY BHAVAN, MUVATTUPUZHA.

BY ADV. SRI.P.V.ELIAS

RESPONDENTS:

PERINGOTTUKARA FINANCE AND
INVESTMENT CO. LTD., V/259, P.N.U.S. BUILDINGS,
ANTHIKAD BRANCH, MUVATTUPUZHA, REPRESENTED BY ITS
DIRECTOR.

BY ADV. SRI.V.R.KESAVA KAIMAL
SRI.N.M.MADHU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 05/06/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

WPC NO. 29887/2005

APPENDIX

PETITIONERS EXHIBITS:

EXT.P1: COPY OF THE ORDER DATED 7.10.2005 IN E.A. NO.66/2004 IN E.P. NO. 129/2002 IN O.S. NO. 681/1999 ON TH FILE OF THE MUNSIFF'S COURT, MUVATTUPUZHA.

/TRUE COPY/

PIUS C. KURIAKOSE, J.

W.P.(C) NO. 29887 of 2005

Dated this the 5th day of June, 2007

JUDGMENT

Ext.P1 order passed by the Execution Court directing arrest and detention of the petitioners/ judgment debtors on the reason that they have failed to comply with the direction under Order XXI Rule 41 (2) to file an affidavit regarding their assets, is under challenge.

2. Heard both sides. The learned counsel for the petitioners submits that one of the contentions which had been raised before the Execution Court is that though the application to set aside the Ex-parte decree which was being executed was unsuccessful, the Civil Miscellaneous Appeal (CMA) has been preferred against the order dismissing the application and the same was pending and that till such time as the CMA is disposed of execution proceedings should be kept in abeyance. Admittedly at the time when impugned order was passed by the learned Munsiff the petitioners had not obtained any stay from

the appellate court. But the learned counsel for the petitioners submits that the CMA was ultimately allowed. If the CMA was ultimately allowed, the decree, which is being executed, has been set aside.

3. Sri. V.R.Kesava Kaimal counsel for the decree holder seeks time to verify whether CMA has been allowed. For the present, I accept the submissions of the learned counsel for the petitioners and dispose of the writ petition directing that if the decree in O.S No. 681/1999 on the basis of which Execution Petition (E.P.129/2002) was filed has been set aside, the Execution Court will refrain from proceedings further in execution of that decree.

The writ petition stands disposed of as above. No costs.

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PIUS C. KURIAKOSE,
JUDGE.

dpk